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A LETTER, &c.

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A
LETTER

ADDRESSED TO A

Member of the House of Commons,

ON THE

STAT. 21, HEN. VIII. C. 13.

AND ON THE

*Grievances to which the Clergy are
exposed in consequence of it;*

WITH

HINTS AND OBSERVATIONS

RESPECTING A

NEW BILL,

Truro:

PRINTED BY J. TREGONING, AT THE
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1802.

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SIR,

I take the liberty of addressing myself to you, as a member of our House of Commons. The importance of my subject will, I trust, secure me from the charge of obtrusion. I wish to submit to your consideration some remarks upon the Statute of the 21, Hen. VIII. CAP. 13, and to lay before you the grievances, to which the Clergy are exposed, in consequence of it.

This Statute has commonly born the plausible title of the "Statute against pluralities and non-residence:" and the general objects, which it may be supposed to have in view, viz. the fixing the Clergy upon their benefices, and the restraining them from engaging in occupations, which might be inconsistent with their character and duties, are such, as we cannot but approve. The preamble, also, to it, must strike us, as being fraught with

moderate, benevolent, and pious sentiments: and we are naturally led by it to expect, that the enacting clauses are framed in the same spirit, and that the means, which this Statute employs, correspond with the end and the principles, which it professes. But in those clauses, we shall in vain search for proofs of moderation, benevolence or piety: and a nearer acquaintance with the Statute will convince us, that, whatever semblance of the lamb it may assume on its outside, it conceals the wolf beneath it.

But a late measure, adopted by Parliament, speaks more clearly and decisively on this point than words can speak. I allude to an Act, which took its rise in your honourable House, which suspends the penal clauses of this Statute, for a limited time. Now the suspension of a penal Statute is not an ORDINARY PROCEEDING: and as such, it proves a great deal, in this present instance. It authorizes us, in the first place, to infer, that our Legislators were convinced, that this Statute contained such grievances, as they could not suffer to exist, EVEN FOR A FEW MONTHS LONGER; secondly, that they pledged themselves to provide a final remedy for those grievances; but, that they deferred doing this, until their opinion might be matured by "opportunity of leisure" and enlarged enquiry, and the question reconsidered with a gravity and deliberation suitable to its extraordinary importance. If a man, Sir, who has thought fit to chain his dog or to muzzle him, should afterwards let him loose

unmuzzled and untamed into the world, to bite and to devour, he cannot plead, that he was ignorant of his fierceness; he is answerable for all the consequences.

But to EXHORT you, Sir, to proceed in this work, the importance and the necessity of which, you have so deliberately, solemnly and publicly avowed, would be to INSULT you. The Clergy, who have lately been indebted to your GENEROSITY, cannot entertain a fear, that they shall be compelled to appeal to your JUSTICE and HONOUR. For justice and honour must make YOU as quick sighted, as any personal interest can make THEM, in discovering that they would be reduced by your temporary protection, (if it should stop there) to a worse situation than that, in which they were, previously to your interference: that they would not only be held up as more conspicuous objects of attack, from the publicity, which you have given to this Statute, but also appear to be abandoned by their natural guardians, as deserving it. Yes, Sir, the number of informers would be increased, and the various means of annoyance, which this Statute, so abundantly, supplies, would be considered, in every point of view, so as to be made most effectually subservient to the low purposes of extortion or malice. The Clergy might, indeed, derive THIS ONE CONSOLATION from the Statute's being more generally known, and more accurately studied: viz. that they would not, probably, be

attacked upon weak grounds, but that prosecutions would be commenced and conducted against them strictly *SECUNDUM ARTEM*, and that, if they are to be ruined, they would be ruined *ACCORDING TO LAW*. Surely, Sir, you must agree with me in opinion, that, if the Clergy are to be *THUS* reformed and kept in order, the end will be obtained by means neither the most respectful to *THEM* nor most honourable to our country!

The oppression, of which the Clergy complain, is this; that an antient Statute has been drawn forth from its obscurity and put in force against *THEM*, who are not the *PROPER OBJECTS* of it. The origin, therefore, of this Statute and the circumstances of the times, at the period, in which it was enacted, are subjects well worthy of your attention. They will enable you to see what evils the Legislators had in their contemplation, and you may compare them with the evils, which exist at present. This Statute was framed in times very different from our own, and had in view a body of men, who very little resemble, either in character or circumstances, the Clergy of the present day. We need not to go out of the Statute itself, in order to discover this. We find in it evident allusions to religious houses and the various orders of spiritual persons, who were members of them. I shall not trespass upon your time by entering into a detailed account of monasteries or priories, monks or friars; nor shall I endeavour to prove, that

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those religious houses were strongly disposed to engross property and to amass wealth, in the capacity of bodies corporate: various Acts in your statute-book may convince you of this, independently of history. The section in this very Statute, which restrains spiritual persons from keeping "ANY MANNER OF TAN-HOUSE OR BREW-HOUSE," however ludicrous ideas it may suggest at present, proves thus much, that the Clergy, in those days, engaged in such occupations.

The controlling influence over spiritual persons, which the Pope exercised in this kingdom, at that period, constitutes, also, a material difference between THOSE times and THESE. To this circumstance also, this same Statute has reference: for it had been usual with the Pope to grant dispensations of non-residence, to as many, as would purchase them, and to dispose of abundance of ecclesiastical preferments to FOREIGNERS, who never resided here at all. The Clergy, also, of this kingdom, were too much inclined to flock to the Court of Rome and to dance attendance upon his Holiness, to the no great advancement of their loyalty or morals.

The clauses in this Statute, which restrain spiritual persons from "taking to ferm" were directed against RELIGIOUS HOUSES: and, in order that none of the REGULAR CLERGY, who were members of them, might, by any means, evade the operation of the law, the

framers of it contrived, according to the arbitrary proceedings of those times, to include, in one sweeping, comprehensive clause, all the REGULAR OR PAROCHIAL Clergy also. In these times, this SECONDARY and INCIDENTAL OBJECT of those first enactors of this Statute, becomes the VERY PRIME OBJECT AND ESSENCE OF THE LAW. Religious houses are dissolved, monks and friars are no more, and the parochial Clergy alone remain: and over the heads of these its penalties are suspended.

If we take a view of the domestic habits of spiritual persons, at that period, we shall find, that they partook of the general influence of the manners of the age and the modifications of their peculiar order. The parochial Clergy were then debarred from marriage. Their domestic wants, therefore, were, comparatively, few. Many articles, which families deem to be NECESSARIES NOW, were to them SUPERFLUITIES, or not known by them. They maintained themselves and their labourers, from the produce of the land, which they occupied, or from the tithes, which were their due. What, therefore, they bought, they bought not with a view of "selling again," but converted it, in an improved or manufactured, state, to domestic uses. More circumscribed, as to their wants, and more independent, as to the supply of those wants, which they felt, than we can be at present, they stood in little need of the use or intervention of money, which is now become the constant and indispensable medium of ex-

change, and the life and soul of agriculture and commerce in the present improved state of society. If therefore, spiritual persons, at that time and under those circumstances, "bought to sell again," the law considered them as doing more than **LIVING BY THEIR FARMS AND IMPROVING THEM.** It considered them as engaged in an **UNNECESSARY AND DISGRACEFUL TRAFFIC.**

I think it unnecessary, Sir, to enter into any comparisons between the condition and habits of the Clergy of those times and the present. The lines of distinction are sufficiently broad and obvious, to support my arguments. Neither do I think it incumbent upon me to draw your attention to the **MORAL CHARACTER** of spiritual persons, in the beginning of the sixteenth century. I trust, that our Clergy at present, stand in no need of **COMPARISONS,** in order to raise themselves **RELATIVELY** in the scale of merit: they are before the public, and let the public judge of their **GENERAL RESPECTABILITY AND USEFULNESS.** And to your candour, Sir, I leave it, to decide, whether the Statute of 21, Hen. VIII. c. 13, be applicable to them. And surely, Sir, if an **ANTIENT** Statute is brought to bear upon men and cases, which were not in the contemplation of the Legislators, it becomes virtually a **NEW LAW** as to the persons and cases, to which it is applied: and it is a new law of **THE WORST SORT:** it is a law not enacted by the **DISCRETION** of MAN but by **TIME AND CHANCE.** It will be wise,

or absurd, just, or oppressive, as to these new objects of it, as it may happen, according to the accidental changes of men and circumstances. Penal laws, in order to be wise and salutary, must be either the remedies of present or the preventatives of probable evils. When the circumstances of the times and the habits of a people shall have undergone any material change, the same wisdom, which enacted laws, will shew itself in their revision or repeal. If this should not be the case, the mere LETTER of the law must outlive the SPIRIT of it, and may become an engine in the hands of malice or extortion to the ANNOYANCE of many members of society, the TERROR of more, and the DISGRACE of all.

As, Sir, I take it for granted, that in conformity with these principles, you will soon be engaged as a Legislator, in the repealing or revising some parts of the Statute of 21, Hen. VIII. c. 13: I shall lay before you the particular clauses, which, I conceive, contain materials for oppression: and I shall add, what I apprehend to be the interpretation of those clauses, as it has been given us by our courts of law, and I shall then submit to you some observations, which have occurred to me, not only respecting this said antient Statute, but also the new bill, which the Clergy have reason and a right to expect will be soon proposed in your honourable House, as a substitute for it, and a remedy for the grievances, under which they labour.

21, HEN. VIII. C. 13.

CASE 1st.

*Spiritual Persons taking to Ferm
Lands, &c.*

§ 1. FOR THE MORE QUIET and virtuous increase and maintenance of divine service, the preaching and teaching the word of God with godly and good example giving, the better discharge of Curates, the maintenance of hospitality, the relief of poor people, the increase of devotion, and good opinion of the lay-fee towards spiritual persons. Be it enacted, ordained, and established by the King our sovereign Lord, with the assent of the Lords spiritual, and temporal, and the Commons in this present Parliament assembled, and by authority of the same, That no spiritual persons, secular or regular, of what degree soever he or they be, shall from henceforth take to ferm to himself, or to any person or persons to his use, of the lease or grant of the King, our sovereign Lord, nor of any other person, or persons, by letters patents, indentures, writings, by words, or otherwise, by any manner of means, any manors, lands, tenements, or other hereditaments for term of life, for term of years, or at will, upon pain to forfeit ten Pounds for every month, that he or any other

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§ 1. Enacts that NO SPIRITUAL PERSON shall take to ferm (or hold by lease or grant) any lands, tenements or hereditaments for term of life, for years or at will, under a penalty of forfeiting £10. by the month, as long as he shall occupy the same.

to his use, shall occupy any such ferm, by reason of any such lease, or grant hereafter to be made: the one half of which forfeiture to be to the King our sovereign Lord, and the other half thereof, to every such person, that will sue for the same, by original writ, bill or plaint of debt, or by any information in any of the King's courts, in which action and suit no wager of law shall be admitted for the defendant, nor any essoin or protection allowed.

§ 5. AND BE IT ALSO ENACTED by the authority aforesaid, that no spiritual person or persons secular or regular, of what estate or degree soever, they be, shall from henceforth, by himself, nor by any other, for him, nor to his use, bargain, and buy, to sell again, for any lucre, gain, or profit, in any markets, fairs or other places, any manner of cattle, corn, lead, tin, hides, leather, tallow, fish, wool, wood, or any manner of victual or merchandise, what kind soever they may be of, upon pain to forfeit treble the value of every thing by them, or by any to their use, bargained and bought to sell again, contrary to this present Act, and that every such bargain and contract hereafter to be made by them or by any, to their use, contrary to this Act, shall be utterly void and of none effect, and the one half of every such forfeiture to be to the King our Sovereign Lord, and the other half to him, that will sue for the same by original writ of debt, bill, plaint or information in any of the King's courts, in which action or suit no wager of law for the defendant shall be admitted, nor any essoin nor protection allowed.

§ 5. Enacts that no spiritual person shall buy to sell again any corn, cattle, &c. &c. under a penalty of forfeiting double the value of the thing sold and declares all such bargains void.

§ 8. PROVIDED ALSO, that every spiritual person or persons, not having sufficient glebe or demean lands, in their own hands, in the right of their churches, monasteries and houses, for pasturage of cattle or for increase of corn to and for the only expences of their householders, and for their carriages or journies, may take in ferm other lands and buy and sell corn and cattle for the only manurance, tillage and pasturage of such farms, so that the increase thereof be always employed and put to and for the only expences in their households, and hospitalities, and not in any wise to buy and sell again for any other commodity, lucre or advantage, any corn, or cattle renewing, coming, or growing, in and upon any such ferm, or otherwise, but only the remain and overplus above their expences of their households, if any such shall happen, of the breed and increase thereof, without fraud or covin; any thing in this present Act to the contrary hereof notwithstanding.

§ 35. PROVIDED ALWAY, that it may be lawful to every spiritual person or persons, to take in ferm any messes, mansions, or dwelling-houses, having but only orchards or gardens, in any city, borough, and town for their own habitation or dwelling, any thing in this Act to the contrary notwithstanding.

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§ 8. Restrains the enactments of the 1st and 5th sections by providing that *spiritual persons not having sufficient glebe land in right of their churches*, may take in ferm other lands and buy and sell corn and cattle for the only manurance, tillage and pasturage of such farms, so that the increase be employed in their households and hospitalities, and not to buy to sell again for lucre or profit, but only the overplus above the expences of their households.

§ 35. Further provides that *any spiritual person* may take in ferm any messuages mansions or dwelling-houses for their own habitation in ANY CITY, BOROUGH OR TOWN having only orchards or gardens.

REMARKS.

Half of the penalties imposed (by S. 1 and 5.) is given to the King, and half to any person who will sue for the same, i. e. to any common informer,

It is to be observed, that the proviso (S. 8.), which grants a liberty to spiritual persons to take in ferm, when their glebe is insufficient, and to buy and sell cattle or corn, under the limitations mentioned, extends to such spiritual persons only, as HAVE GLEBES IN RIGHT OF THEIR CHURCHES. i. e. BENEFICED CLERGYMEN. Their case must be, therefore, separated from that of the unbeneficed Clergy, as the law does not equally apply to both . . let us consider both cases.

1. BENEFICED CLERGY. It is clear, that in every case where any Clergyman TAKES TO, FERM AND OCCUPIES any lands, he is, prima facie, liable to the attack of any informer,, who as plaintiff, has nothing to prove, but the simple fact, that the spiritual person has taken lands to ferm . . . The Clergyman, as defendant, has the burthen of proving, that he comes within the proviso (S. 8.) of the Statute, which is rather confused in its terms on this point, and general in its expressions. *

It appears, that the proviso (S. 8.) would not protect a beneficed Clergyman, who had taken a lease of a DWELLING HOUSE, on any emergency. It is true, however, that by S. 35 he may take a house for his habitation, provided that it be situated in some city, borough, or town, and have only orchards and gardens attached to it.

2. UNBENEFICED CLERGY. It appears, that no unbeneficed Clergyman can take to ferm any lands, tenements, or hereditaments, excepting singly a dwelling house for his habitation, situated in some city, borough or town and having only orchards or gardens. . . Under another Statute (13, El. c. 20, S. 1.) it is, indeed, provided, that any parson, having two benefices, may demise the one of them on which he is not ordinarily resident to his Curate, provided that such lease shall endure no longer than during the Curate's residence without absence for forty days in a year. . . This enactment can however but very imperfectly assist the Curate, in the enjoyment of any glebe lands, so leased to him, for by the Statute under consideration (21 Hen. VIII. c. 13.) he cannot buy corn or cattle, to sell again. The enactment, which forbids it under a penalty, being GENERAL and extending to EVERY Clergyman whilst the proviso (S. 8.) is confined to BENEFICED CLERGYMEN exclusively.

CASE 2nd.

Clergy taking Lands in Ferm and underletting them for Rent.

§ 2. AND BE IT ALSO ENACTED by the authority aforesaid, that all and every such spiritual person or persons, which now have or occupy in ferm, by themselves or by any other, to their use, any manors, lands, tenements, or hereditaments of the lease, or grant of the King our sovereign Lord, or any other person or persons, for term of life, or for years, or at will, by any writing, or otherwise, or that now have annual rents, or any other annual advantage, or profit by occasion or colour of any such lease or ferm, shall clearly bargain, sell, give, or grant away, on this side the feast of St. Michael the Archangel next coming, to any such lay person or persons, as they will at their own nominations and appointment, all such lease, term, interest and profit, as any such spiritual person, or any other to his use, now hath or have, in or by reason of any such ferm; so that in no wise any such spiritual person or persons, at any time after the same feast, by themselves, or any other to their use, by any manner of means, fraud or male engine, shall have, use or occupy in ferm, any manors, lands tenements or hereditaments, of the demise, lease, or grant of any, person or persons heretofore made, or hereafter to be made, to themselves or to any other to their uses; *nor from* the said feast, shall take any annual rent, or other annual

§ 2. Enacts that NO SPIRITUAL PERSON WHATSOEVER shall take to ferm (i. e. hold by lease or grant) any *lands, tenements, or hereditaments* for term of life, for years, or at will and afterwards underlet the same, under a penalty to pay ten times the amount of any rent, which he may have received in compensation for such underlease.

advantage, or profit, by occasion or colour of any such lease or ferm, by any manner of means, upon pain to forfeit for every month so occupying any such ferm, at any time after the said feast, contrary to this present Act ten pounds, *and upon pain* to forfeit ten times as much, as any such spiritual person or any to his use, shall take in any annual rent, advantage or profit, by occasion or colour of any such lease, at any time after the said feast; the one half of which forfeitures to be to the King our sovereign Lord, and the other half to him, that will sue for the same, by original writ, bill or plaint of debt, or by information in any of the Kings courts: in which action and suit no wager of law shall be admitted for the defendant nor any effoin nor protection allowed.

REMARKS.

The above clause is not moderated by any proviso in the Statute, nor by any subsequent Act, and extends to EVERY SPIRITUAL PERSON of every rank and degree. The penalty is distributed as in the former case, and may be recovered by a common informer.

RESIDENCE.

§ 26. BE IT ALSO FURTHER ENACTED by the authority aforesaid, that as well every spiritual person now being promoted to any archdeaconry, deanry, or

§ 26. Enacts that every spiritual person promoted to any archdeaconry, deanry or dignity in any cathedral church or benefice with any

dignity in any monastery or cathedral church, or other church, conventual or collegiate, or being beneficed with any parsonage or vicarage, as all and every spiritual person and persons, which hereafter shall be promoted to any of the said dignities or benefices, with any parsonage or vicarage, from the feast of St. Michael the Archangel next coming, shall be personally resident and abiding in, at, and upon his said dignity, prebend, or benefice, or at one of them at the least; and in case, that any such spiritual person, at any time after the said feast, keep not residence at one of his said dignities, prebends, or benefices, as is aforesaid, but absent himself wilfully by the space of one month together, or by the space of two months to be accounted, at several times, in any one year, and make his residence and abiding in any other places, by such time, that then he shall forfeit for every such default x. lib. sterling: the one half thereof to the King our sovereign Lord, and the other half of the same to the party, that will sue for the same in any of the King's courts by original writ of debt, bill, plaint or information, in which action and suit the defendant shall not wage his law nor have any essoin nor protection allowed.

REMARKS.

The several exceptions to this section will be found in S. 28, 25, Hen. VIII. c. 16, 28, Hen. VIII. c. 13, 25, Hen. VIII. c. 16, and

parsonage or vicarage shall be personally resident at and upon his said dignity, prebend or benefice under a penalty, if he absent himself wilfully for the space of one month together, or by the space of two months to be accounted at several times in one year, of forfeiting ten pounds.—One half to the King the other to any informer.

33, Hen. VIII. c. 28. . . The privileged persons are Chaplains to the King . . . and Chaplains to Noblemen, &c. during their attendance in the household of such, as retain them. Heads of houses, magistrates, and readers of public lectures, in our Universities, and all students UNDER FORTY YEARS OF AGE residing there, bona fide for study.

It has been decided by our law courts, that, in order to constitute LEGAL RESIDENCE, it is necessary for a Clergyman to reside in his PARSONAGE HOUSE.

A Clergyman is liable to forfeit 10l. for EVERY MONTH TOGETHER, that he shall continue to absent himself from his benefice at one time, in one year, or for as many two months in the aggregate, as he shall absent himself, at DIFFERENT TIMES within the year. . . A common informer must put in his suit within the year. . . the King within two years.

The reasons for non-residence which have been allowed to be LEGAL by courts of justice, appear to be. . . . 1. If a patient by advice of his physician, bona fide remove for better air.* 2. Lawful imprisonment without

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* Viner's abridgement vol. 19, p. 147.

covin.† 3. If there be no parsonage house.‡*
4. Fear of an execution.§

These, Sir, are the particular clauses of this Statute, to which I wished to draw your attention, and I think, that you cannot fail to discover in them stronger marks of the blindness and precipitancy of human passions, than of calm and impartial legislation. A wish to punish and to depress, seems to be interwoven in the very texture of the law. And history, Sir, can inform you, that such an opinion is not ill founded. The lapse of time has given an additional rigour and inconsistency to some parts of this Statute, as they affect the **PRESENT CLERGY**. The Law as applied to **THEM**, adds mockery to its oppression. Look round, I pray you, Sir, upon the Clergymen, who are your neighbours in the country, and consider, how few of them there are, on whom this Statute may not be brought to bear; and consider also, the consequences, which it must produce, if its powers should be exercised against them. Let us, then, suppose, that this Statute is in full force, and you must be struck not only with its injustice but with its absurdity also.

† Viner's abridgement, vol. 19, p. 147. ‡ Ditto. § Ditto.

* In a late case, however, the decision has been very strict, a Clergyman resided within his parish, **BUT NOT IN HIS PARSONAGE HOUSE**, which he was employed in repairing. But in this case the jury were directed by the court, to find for the plaintiff, and the penalty was recovered!!!

The laws of this country, Sir, permit spiritual persons to live in society and to form families: why do they lessen the boon, by imposing upon them restrictions, which are inconsistent with such permission? Why do they prohibit those natural consequences, which NECESSARILY ensue from the situation, in which Clergymen are placed? Why, WITH WIVES AND CHILDREN around them, are they treated, as if they were SOLITARY, UNCONNECTED, MONKS? Why should it be a CRIME in a CLERGYMAN ALONE to do his duty, as a father and a husband? Why should he be so circumstanced as not to DARE "to PROVIDE FOR HIS OWN?" You may perhaps, Sir, imagine, that these are idle unmeaning questions: and that a Clergyman, in these times, lies under no disability, as to these important points. When I ask these questions, I have in view the Statute, which is the subject of this address. Suppose, Sir, that an opportunity should occur unto a Clergyman, BENEFICED OR UNBENEFICED, to purchase leasehold property, in order to secure a maintenance for his wife and children, during their lives, when death shall have deprived them of his protection and support; the very first section of this Statute compels him to forego the opportunity, however advantageous: lest he should bring RUIN upon himself and those, whom he would wish to serve. *Should he,

* In the WESTERN COUNTIES where Leasehold tenures are so very common, the severity of this Statute must be dreadfully felt and prove RUINOUS to many persons.

however, possess such property, and flatter himself, that he hath complied with the spirit of the law, by underletting it; the second section tells him, that it will be AT HIS PERIL, if he receive a rent for it. . . . Now had this same property descended to him, as an inheritance, or had it been purchased by him, in fee simple, this same Statute would have permitted him to * OCCUPY it himself, or to let it to another person. But alas, Sir, the Clergy, in general, are not distinguished for wealth nor goodly heritage. The law, in this instance, allows them an indulgence, of which very few can avail themselves! Thus is their poverty mocked, and the oppression of the Statute stands confessed, by disclaiming all pretences to consistency and meaning!

Again: spiritual persons are commanded by this Statute, to reside upon their benefices. Why are THEY, who in general, must live in the country, cut off from the comforts and conveniences, which belong unto the country? Why are they curtailed, as to the habits, which a country life necessarily implies? Why are the PAROCHIAL CLERGY at this day considered as the INHABITANTS OF MONASTARIES? Far am I, Sir, from wishing to transform the Clergy into farmers, bustling at fairs and markets, buying and selling and getting gain, or to throw any temptations in their way, which might call off their attention from their

* Under the restrictions imposed by section 5.

own peculiar and awful duties: But I should wish them not to be debared from any privilege, nor any mode of honest emolument, which is not inconsistent with those duties, nor with the good opinion of the Laity towards them. I should wish them to enjoy every species of INNOCENT amusement, in common with their neighbours, OF THE SAME RANK, which might attach them to the spot, where by law they are bound to fix their residence. Above all, Sir, I should wish, not to drive men of liberal education, and men of good families and connections from the proffession of the ministry, by the frivolous, disgusting, and oppressive restrictions attached to it. I deprecate the day, when "Priests shall be made from the lowest of the people."

Whatever liberty this Statute grants, it seems to grant it, with reluctance and an ill grace. There is some proviso coupled with the permission, which renders it nugatory. Thus it allows spiritual persons to farm their glebe and other lands, in certain cases. But the clause, which prohibits them from "buying to sell again" cuts them off at once from the REAL ENJOYMENT of the land, which the are permitted to occupy, and defeats the very object of the indulgence. In these days, Sir, it is impossible for a Clergyman to employ the GREATER PART of the produce of a large glebe in maintaining his household. What he buys, he must sell again in an improved state, in order to procure various articles of necessity, which

his glebe-land cannot supply. The Clergy of the present day, are not insulated beings. They mix with society and must be influenced, in common with other men, by those changes in manners and in the habits of domestic-life, which society has undergone. . . Now, Sir, if you strictly apply this clause of the statute to the modern Rector or Vicar or any spiritual person, you must either suppose, that it is possible for him to live NOW according to the domestic habits of spiritual persons of the sixteenth century, or you grant him the LIBERTY OF farming and deny him the MEANS of farming, at one and the same time. . . Suppose, Sir, that it were possible for a Clergyman, in these times, to consume the GREATER PART OF the produce of his glebe-land, in his own family: suppose, that he slaughtered his oxen and his sheep for his table, that he manufactured the tallow into candles and the hides into leather: suppose that he spun and worked up his wool for domestic uses: that he converted his barley into malt and his wheat into flour and starch: suppose Sir, that the law permitted him to do all these things; the LETTER of the Statute might be, in a great degree, complied with, he might not indeed "buy to sell again" but what would become of the SPIRIT of the law? Is it probable, that a Clergyman, thus encumbered with the superintendence of such multifarious concerns, would find more leisure or feel more inclined to attend to his professional duties, than if he were permitted "to buy to sell again," so that by means of money, that active and

indispensable purveyor of the present age, he might command the labour of others and more easily and speedily supply his various wants? If the "buying to sell again" necessarily implied, that a Clergyman should become a "DEALER in corn or cattle" or that he must transact the business of bargain and sale "IN HIS OWN PERSON;" The Clergy ought to RENOUNCE the privilege. They ought to be even more jealous of their own dignity, than the law could be for them. But in the present state of society and according to the prevailing system of agriculture, in which money has become the constant and necessary medium of exchange, buying to sell again, follows as a necessary consequence from the permission, which is granted them to occupy and to farm.

Spiritual persons, even in the days of Henry the eighth, were allowed by this Statute so to manage their lands, that they might be productive, and admit of the agricultural improvement of the times. The Clergy, at present, expect no greater boon, in this their day. But it is a boon, which this Statute denies them. And, why amidst agricultural improvements, and in times, when we have so DEARLY bought the knowledge of the REAL VALUE of our "daily bread" the lands of the Clergy alone should be DOOMED BY LAW to be unimproved and unproductive, I cannot discover.

When I see, in certain parishes, no glebe-lands, and also the great inequality of the

glebe-lands, which belong to parishes of nearly equal population and extent, which lands are allowed to be farmed by their respective incumbents, under the restrictions imposed by the Statute: when I see, in certain parishes, certain portions of land allotted by the legislature, for the maintainance of the incumbents, under Acts of inclosure: moreover, when I consider, that the **LEGAL REVENUE OF THE CLERGY** arises from **THE PRODUCE OF THE SOIL**: I cannot think, that the agricultural avocations of the Clergy can be regarded by the legislature, as productive of probable evil either to church or state. Were the clauses in this Statute, which have respect to spiritual persons taking to farm, altogether repealed, I do not think, that the parish Priests of the present times would be thereby encouraged to farm more ground, than the Clergy have been used to farm, for these last hundred years past. Such a repeal would free the Clergy from oppression and expunge from your statute-book a foul disgrace. Should it, however, be deemed unsafe to remove all restrictions on this head, let some check, at least, be thrown in the way of **CORRUPT** and **VEXATIOUS PROSECUTIONS**: let the burden of proving that a spiritual person farms more land, than what is necessary to maintain his household, **LIE ON THE PROSECUTOR**.

There may be some of "your geniuses, and philosophers," men, Sir, of too enlarged and liberal minds, to continue to creep on in

the humble track of vulgar prejudices, who may have been used to look upon the office and religion of the Clergy in no other light, than as "the craft by which they have their wealth." These men, Sir, out of their GREAT BENEVOLENCE AND LIBERALITY OF SENTIMENT, may not, perhaps, be altogether displeased at seeing the restrictions of the Statute attach upon BENEFICED Clergymen. There may be other persons also, who may view, with no small degree of complacency, these checks and penalties, suspended over the heads of the Clergy, because the Clergy HAPPEN TO BE THE LEGAL PROPRIETORS OF TITHES. But what can even such men say of the various disabilities, under which the UNBENEFICED Clergy labour in consequence of this Statute? When they see, that unbeneficed Clergymen cannot, take to FARM any LANDS, &c. nor even take a DWELLING HOUSE if it be situated in the country: that they cannot buy to sell again, &c. &c. (see page 15) Many of these men, Sir, make no gain of "their craft" and have no professional duty to employ their time.

There are some Clergymen, Sir, who have little chance of being promoted to any benefice, and who have failed, also, in obtaining employment in their profession. With whatever difficulties these men have to struggle, they have still the character and appearance of their order to preserve in society. The Statute, Sir, heaps fresh difficulties and discouragements

upon them. Again, there are other, UNBENEFICED spiritual persons, who are men of fortune and possess large estates. I have some of these, Sir, in my contemplation, who to the strict piety and decorum of their order, add the most amiable and useful qualities of country gentlemen. Now, Sir, to these different descriptions of unbeneficed spiritual persons, suppose the restrictions of the Statute applied, and consider the consequences. It is sufficient, Sir, to state that SUCH persons are the objects of SUCH a Statute, to overwhelm us with astonishment!!

The clauses in this Statute, which enforce the RESIDENCE of the Clergy, are certainly open to less weighty objections. But even these require the wisdom and interference of the Legislature. I should hope, that the SAME END might be obtained by BETTER MEANS.

And first of all, I must remark to you the glaring INEQUALITY of the PENALTY, as levied, by this Statute on different persons, who are non resident. Whether the benefice be small, or great, the SAME FORFEITURE attaches upon the spiritual person, who absents himself from it. No regard is had, either, to the population of the parish, which he has deserted, or the revenue, which he receives from it. And these are the only circumstances, which enable us to form a judgment of the probable mischief of non residence, in different cases, and to ascertain the relative magnitude of the offence. There was, indeed this inequality, and conse-

quently an injustice in the law, at its first enactment. But, in those times, the penalty was SO EXCESSIVE TO ALL, that it must have amounted to an absolute and decisive prohibition of the evil. But here, as in many other instances, which I have pointed out in this Statute, the change of times has added an ABSURDITY to the INJUSTICE of the law. Altho' the NOMINAL penalty may be the same, the REAL penalty, in these days, will vary in proportion, as it is felt by different persons. Now the REAL penalty is not only in an inverse proportion to the apparent magnitude of the offence of non residence, in different beneficed Clergymen, but in the most GLARING cases, it must, also, prove inadequate, as to the prevention of it. It MAY BE EXCESSIVE, or it MAY BE trifling, according to the poverty or wealth of him, on whom it is levied. Some may be CRUSHED by the law, others may DEFY the law. Some may be compelled to take up their perpetual RESIDENCE IN A JAIL, whilst others WHO ABSENT THEMSELVES FROM LARGE PARISHES, may be enabled to PURCHASE THE INDULGENCE of non residence, by paying a certain annual tax from their income.

I do not, Sir, suggest to you these observations, with a design of impressing upon you the necessity of increasing or diminishing the penalty, in particular cases, but in order to prove, that the mode adopted by the Statute, for correcting the offence, is, in many cases,

both unjust and inadequate to accomplish the object of the law. I should think, Sir, that the collected wisdom of these kingdoms might devise other measures, more decorous and impressive, to reform the ministers of the established church, than QUI TAM ACTIONS: I should hope, that our Legislators, on due deliberation, might be enabled to discover, other overseers, to guard the morals and discipline of the Clergy, who would be more interested in their welfare and respectability, than COMMON INFORMERS. But, Sir, whilst the punishment of spiritual persons is vested in the hands of those, who have an INTEREST rather in their CONTINUING to offend, than in their obedience to the law, we can scarcely expect to see either discipline or dignity restored unto the church. The Clergy are placed between the TERROR of the PENALTY, and the TEMPTATION of COMPROMISE. They have the choice of different modes of DISGRACE; of being held up to the scorn and ridicule of a public court, or of "crouching for their morsel of bread" before the most profligate of mankind. And whilst some may be tempted to cover their disobedience to the law, by humiliating and corrupt compliances, others, of more firm and virtuous characters, may be RUINED by its severity. If, Sir, it be thought expedient, that the Clergy should be kept within the bounds of proper discipline, by the terror of penalties, let the law be such, as to COMMAND RESPECT and ENFORCE OBEEDIENCE.

That the residence of the Clergy upon their benefices, is to be wished, encouraged, and enforced, is a truth, which is universally admitted. I am aware, that heavy complaints have been made against the Clergy, on this subject. That some amongst them abuse their trusts, I will not deny. I give full credit to the complainers, for the honest intention of their complaints. By speaking so strongly in the praise of residence, they declare the high opinion, which they entertain of the clerical office, and in their abuse of the non residents, they pay every Clergyman, who is stationary on his benefice, the greatest possible compliment.

But it is one thing, Sir, to approve of residence IN GENERAL TERMS, and it is another thing to approve of a law IMMEDIATELY and INDISCRIMINATELY enforcing it. Every Legislator should pause, before that he enact a law and consider, how the law can be carried into effect, and what immediate consequences will be derived from it. He must take a view and make a proper estimate of the materials, on which he is to operate. He must consider things AS THEY ARE, as well as WHAT THEY OUGHT TO BE. It behoves him, not to suffer himself to be carried by the ZEAL OF THEORY, SO RAPIDLY towards his object, as not to reflect, in a PRACTICAL LIGHT, upon the intermediate ground, over which he must pass. For it is his duty to endeavour to obtain as MUCH GENERAL GOOD, with as LITTLE PARTICULAR AND COLLATERAL EVIL cleaving to

it, as possible. Now I should apprehend, that much evil would be produced by any law, which required from the Clergy, IMMEDIATE and INDISCRIMINATE residence. A very numerous, very useful, and very respectable body of men, who have difficulties enough to struggle with, even in the present state of things, would be very materially affected by it: I mean that part of the Clergy, who are employed as CURATES; who entered into the profession, and incurred the heavy expences of an academical education, suitable and preparatory to it, upon THE FAITH OF CUSTOMARY INDULGENCE, and with a PROBABLE VIEW of living by it. These men have had the sanction and the licence of the BISHOPS themselves for the appointments, which they hold: and I am sure, that the Bishops must deeply feel the hardship of the necessity, which should compel them SUDDENLY to revoke, what they have so SOLEMNLY and DELIBERATELY granted. If every beneficed Clergyman is to be IMMEDIATELY brought back to his benefice, by the strong hand of the law, the Curate must be necessarily displaced and turned out into the wide world, cut off from all hope of maintaining himself by the profession, which he had been INDUCED to choose, and, according to the principle of the indelibility of the clerical character, debarred from every other means of getting his bread.

In some particular cases, also, I should conceive, that WHOLE PARISHES would suffer no inconsiderable injury from the SUDDEN CHANGES, which would be produced.

The inference, which I would wish you to draw from these and other obvious considerations, is this: that residence cannot be enforced by any GENERAL LAW. But, that it must be made, in a great measure, to depend upon DISCRETIONARY POWER vested in proper hands, which may have regard to varying circumstances, and discriminate between particular cases. Where those proper hands are to be found; I will not so far INSULT those, whom I RESPECT, as to think it necessary to point out to you.

Our Legislators may indeed, specify and limit the cases of exemption from residence, by some GENERAL RULES. And it seems expedient, that some such general rules should be ascertained: They would lessen the responsibility of those, who are intrusted with the discretionary power, and screen them from the importunity of claimants. Yet as we must expect, that many cases fairly entitled to exemption, may occur in the wide field of possibilities, which cannot be comprised within the limits of definition, these GENERAL RULES cannot be framed with such strictness as not to be occasionally superseded by discretionary power.

As more just and complicated claims of exemption from residence may be supposed to arise in cases, which existed PREVIOUSLY to the new bill, which we have reason to expect; justice and policy, point out, that however the discretionary power may be circumscribed by specific rules, as to the FUTURE a greater latitude

should be allowed to it, as to the PAST. By these means, Sir, you will prevent your bill from having any appearance of an ex post facto law. It may, indeed, be said, that whatever bill may be passed, enforcing residence, it is still but in AFFIRMANCE of the Statute, 21, Hen. VIII, c. 13. This is literally and theoretically true, but practically not so; as that Statute has been considered in the light of an OBSOLETE LAW, and as such, it has had no general or practical influence upon the Clergy.

I may be asked, perhaps, "are, then, those beneficed Clergymen, who have absented themselves from their benefices, to absent themselves still? Are they to be ENCOURAGED BY LAW, in their non residence? Are they to TAKE ADVANTAGE of their own wrong?" To this I answer, Sir, that I neither expressed an opinion nor a wish, that the non residents should be non residents still: but, that they should be objects of DISCRETIONARY POWER not POSITIVE LAW. And before that we apply the maxim, that a man should not take advantage of his own wrong, in the present case; we ought to be certain, that, ALL the wrong, which SEEMS to belong unto a man be REALLY HIS. This, is, I confess, a delicate subject, in which we have only the CHOICE of difficulties. Through a laxity of discipline, which has, for a long period, been creeping upon us, things have insensibly arrived at their present state: a discretionary power, aided and enforced by law, would, I doubt not, labour to bring them back nearer

towards perfection, GRADUALLY and without VIOLENCE: I trust, that neither the SUDDENNESS nor the SEVERITY of reform will be thought necessary, in order to make up for PAST SUPINENESS, which has given birth to the evil: I trust, that the Clergy will not be PUNISHED (I speak with humility and due reverence) for faults, which the LEGISLATURE and the OVERSEER OF THE CLERGY have shared with them.

I beg, Sir, not to be misunderstood: I am not the supporter of non residence. That man must be as void of A SENSE OF SHAME as of RELIGION, who could DARE to become an advocate in SUCH a cause. I am thoroughly persuaded, Sir, that there is no one thing, that can be named, which would produce so much CERTAIN and GENERAL GOOD to this country, as the residence of the parochial Clergy. Whoever wishes to see "the enemies of our peace" repressed, must wish to see our SPIRITUAL WATCHMEN AT THEIR PROPER POSTS. But, Sir, we cannot effect ALL we wish, at ALL TIMES, however just and good our wishes may be; circumstances put in their claim to our attention, and they will be heard. Non residence is an evil, and an evil, which has been gaining ground upon us. But I trust, Sir, that such measures will be devised by the wisdom of Parliament, that it may LESSEN CONTINUALLY, until finally "it may approximate towards abolition." I trust, that neither zeal, nor wis-

dom, nor power will be wanting, to forward this object so devoutly to be desired: I trust, that those persons, with whom power is deposited, will be TEMPERATE in the IMMEDIATE correction of the evil, WATCHFUL in the DIMINUTION of it, and FIRM as to its FUTURE PREVENTION. I trust, that they will be "so MERCIFUL, that they be not too remiss; and that they will so minister DISCIPLINE, that they forget not mercy."

Strong objections may be also made against the LEGAL INTERPRETATION of residence. The Law fixes a Clergyman to the same spot, and confines him within the walls of a PARTICULAR HOUSE; without any regard being had, either to the circumstances of that house, or of the family, which is to inhabit it. The object of this interpretation is, no doubt, to secure the due attendance of the resident Minister on his parochial duties, and to prevent the parsonage house from falling into decay; and these objects are good. But might not the same end be obtained on easier terms? Might not some appeal be laid open for PARTICULAR CASES? Might not some provision be devised, guarded with suitable conditions and precautions, for securing the GENERAL GOOD, which might be free from the various distressing and vexatious circumstances, which must, in many cases, result from the INDISCRIMINATE APPLICATION OF LAW?

I shall, Sir, HAZARD two more observations on this very important subject of residence.

In whatsoever cases, the liberty of non residence may be granted: it ought to be granted unencumbered with conditions, that are inconsistent with the exemption. Now it appears to me, Sir, that such a privilege would be "a gift and no gift," were the Statute of 13, Eliz. c. 20, "touching leases of benefices" suffered to remain in force. Surely, Sir, in such cases, a Clergyman ought to be permitted to let out his tithes or glebe lands on EQUITABLE TERMS. Propriety and justice, indeed, point out, that the resident Curate should have a PRIORITY OF CLAIM, as to the enjoyment of the grant of them. But neither propriety nor justice demand, that they should be demised to him to the EXCLUSION OF ALL OTHER PERSONS.

Would it not, Sir, tend towards the promotion of this most desirable object of residence, if Clergymen were enabled more easily to EXCHANGE THEIR BENEFICES WITH EACH OTHER? And would not this, in a great degree, be effected, if the present laws against Simony, were under DUE CONDITIONS AND PRECAUTIONS mitigated and modified, with this particular object in view?

Thus, Sir, I have laid before you the grievances, which necessarily flow from the Statute 21, Hen. VIII. c. 13, when directed

against the Clergy of these times. I do not feel the slightest apprehension, that such grievances will be suffered to continue to harass and affright us. They, who disturb themselves with fears of this sort, must entertain ideas of the wisdom and justice of Parliament very different from those, which I have been used to entertain. King Henry the eighth, and his Parliament enacted this Statute, under the influence of the peculiar circumstances of the times, and under the irritation of resentment. Our Parliaments, Sir, neither inherit their resentments, nor the peculiar circumstances of their times. Far be it, therefore from us to think IT POSSIBLE, that our present Legislators should give their sanction to a Statute, that comes in so "questionable a shape:" that, they should, become the DELIBERATE instruments for exercising the vengeance of their PREDECESSORS, when the objects, on which even THEY would have exercised it, are no more; That, in the nineteenth century, and in cold blood, they should continue to wield the angry weapons of King Henry's oppression, rendered still MORE KEEN AND CRUEL, by the change of times, to inflict DEEPER wounds upon the rights and independence of the Clergy, than even He, in the plenitude of power and in the height of resentment either dared or wished to inflict: in short, that they should surpass an angry tyrant in cruelty, oppression and injustice, without having EVEN HIS FUTILE PRETENCES to hold forth unto the world, or his WEAK PALLIATIONS to suggest unto themselves!!

No, Sir, our minds must revolt from a supposition, as unjust to you, as it is disgraceful to those, who can entertain it.

The Clergy, Sir, confide in the wisdom of Parliament to do them justice: and to do them the justice, which they expect, speedily. They trust, that you will take into your consideration, not only the importance of the subject, but also the anxiety and suspense of those, who are principally concerned in it. I hope and believe, that you will never suffer such a subject to appear for a moment, as if it were pushed aside with the calmness of indifference, or the scorn of contempt. I should be grieved, Sir, at the heart, if it could be justly said of any individual member of your Honourable House, "that he careth for none of these things."

The subject which the Statute of 21, Hen. VIII. offers to your consideration, may take up your time from the various and weighty questions, which arise from it: But your deliberations concerning it should not be DEFERRED OR PROTRACTED, by the intrusion of less important matters. It is a subject, Sir, which may DEMAND DELAY: but it is a subject too serious for PROCRASTINATION. I should tremble, Sir, for the credit of your Honourable House: I should tremble for the credit of the House of Peers and more especially FOR THE CREDIT OF THE LORDS SPIRITUAL, who have seats therein, and who WATCH OVER THE INTERESTS OF OUR RELIGION AND OUR ESTABLISHED CHURCH: I should tremble,

Sir, for the credit of THAT RELIGION AND THAT CHURCH, in the eyes of the world, if your deliberations, on this subject, should end, as it has been hinted by some, in a suspension-bill to be renewed from year to year: If our Legislators should content themselves with patching up a mere PALLIATIVE for our grievances, without being able to summon sufficient COURAGE, ABILITY, OR ZEAL so to probe the subject to THE BOTTOM, as to provide a REMEDY for them. Alas! Sir, how insulted would OUR HOLY RELIGION appear in THE PERSONS OF THE CLERGY, if it were possible for things to arrive at this!

But, the question, Sir, will soon be brought before you: and I doubt not, but that you will act respecting it, in a manner suitable to its importance and the trust, which has been reposed in you. The question, not only involves the PROTECTION of the Clergy, but their ENCOURAGEMENT. It lies with our Legislators not only to prevent spiritual persons from being held up to ATTACK and INSULT, but to ensure to them the best means of obtaining RESPECTABILITY. And I trust, Sir, that the Clergy will make a due return of gratitude to the state and to the community, for the result of your deliberations on their case: That they will become the strongest cement to society, by becoming the strongest barriers against immorality and licentiousness: That they will do their utmost (as I trust, that they have hitherto done) to perpetuate our happy constitution and wise establishment in church and state, by doing

the duties of their station, AS BECOMES THE MINISTERS OF CHRIST: by their preaching and their living, by 'setting forth God's true and Holy word from the pulpit and by shewing it to their flocks in a good example.

I am, Sir,

with great respect, &c. &c.

A Resident Parish Priest.

January 1,
1802.

the style of their station, as well as the
evidence by their personal conduct
by setting forth God's true and
good from the right and by showing it to
be in a good example.

I am, Sir,

With great respect, Dear Sir,

A Resident Fellow of the

January 12
1801

Yours most obedt. Servant





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